"बिजनेस पोस्ट के अन्तर्गत डाक शुल्क के नगद भुगतान (बिना डाक टिकट) के प्रेषण हेतु अनुमत. क्रमांक जी. 2-22-छत्तीसगढ़ गजट/38 सि. से. भिलाई, दिनांक 30-5-2001."

पंजीयन क्रमांक "छत्तीसगढ़/दुर्ग/तक. 114-009/2003/20-01-03."

छत्तीसगढ़ राजपत्र

(असाधारण)

प्राधिकार से प्रकाशित

क्रमांक 99] रायपुर, मंगलवार, दिनांक 10 अप्रैल, 2007—चैत्र 20, शक 1929

कार्यालय मुख्य निर्वाचन पदाधिकारी, छत्तीसगढ़
इन्द्रावती खण्ड, मंत्रालय परिसर, रायपुर

रायपुर, दिनांक 10 अप्रैल 2007

क्रमांक 30/स्टोर/07/858.—भारत निर्वाचन आयोग की 2004 की निर्वाचन याचिका सं. 09 में 2006 की सिविल अपील संख्या 4055 अधिसूचना एतद्द्वारा सर्वसाधारण की जानकारी हेतु प्रकाशित की जाती है.

आलोक शुक्ला,
मुख्य निर्वाचन पदाधिकारी.

भारत निर्वाचन आयोग

निर्वाचन सदन, अशोक रोड, नई दिल्ली-110001

नई दिल्ली, तारीख 4 अप्रैल 2007—14 चैत्र, 1929 (शक)

अधिसूचना

सं. 82/छ. ग.-वि. स./9/2004.—भारत निर्वाचन आयोग 2004 की निर्वाचन अर्जी संख्या 09 में बिलासपुर स्थित छत्तीसगढ़ उच्च न्यायालय के तारीख 1 अगस्त, 2006 के निर्णय के विरुद्ध दाखिल की गई 2006 की सिविल अपील सं. 4055 में तारीख 27 फरवरी, 2007 को दिए गए भारत के उच्चतम न्यायालय के आदेश को लोक प्रतिनिधित्व अधिनियम 1951 (1951 का 43) की धारा 116 ग की उपधारा (2) के खण्ड (ख) के अनुसरण में इसके द्वारा प्रकाशित करता है.

आदेश से,

हस्ता./-
(ललित मोहन)
सचिव,
भारत निर्वाचन आयोग.

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 4055 OF 2006

Lalsai Khunte ... Appellant

Versus

Nirmal Sinha & Ors. ... Respondents

JUDGMENT

A. K. MATHUR, J.

This appeal is directed against the order dated 1-8-2006 passed by the learned Single Judge of the Chhattisgarh High Court at Bilaspur in Election Petition No. 9/2004 whereby the learned Single Judge has allowed the election petition in part and set aside the election of the appellant for Malkharaud Assembly Constituency No. 38 to the Chhattisgarh State Legislative Assembly. Aggrieved against the said order the present appeal was filed

The Election Commission of India by Notification dated 7-11-2003, Notified the election to the Legislative Assembly of the State of Chhattisgarh inviting persons to submit their nomination papers between 7-11-2003 to 14-11-2003 and 15-11-2003 was the date of scrutiny of the nomination papers & the last date for withdrawal of candidature was 17-11-2003. The election was fixed for 2nd December, 2003. Nine candidates filed their nominations. After scrutiny, petitioner along with respondents Nos. 1 to 7 remained in contest. The polling took place on 2nd December, 2003 and the result was declared on 4th December, 2003 declaring the appellant as elected for constituency. The appellant was convicted by the Court of Additional Chief Judicial Magistrate, Sakti in Criminal Case No. 208/91-State of Chhattisgarh Vs. Lal Sai and two others under Section 420 read with Section 34 and 468 read with Section 34 of the IPC and punished for two years, rigorous imprisonment on each count and convicted under section 471 of the

IPC and punished with rigorous imprisonment for one year by judgment and order dated 9-5-2002. Aggrieved against this order appellant filed appeal before District Judge and learned Additional Sessions Judge by his order dated 31-5-2002 released appellant on furnishing Bond & Security & suspended judgment & Order of Additional Chief Judicial Magistrate dated 9-5-2002. All candidates were required to submit their nomination alongwith their declaration and affidavit wherein they were required to disclose particulars of conviction for two years or more. The appellant Lalsai though he was convicted and was disqualified but mislead the returning officer and concealed the vital information in the affidavit of his conviction. Therefore, the returning officer could not cencel his nomination.

The lost candidate filed the present election petition raising the question of disqualification of appellant under Section 8 (3) of the Representation of people Act, 1951 (hereinafter referred as 'the R. P. Act'). The defence of the appellant was that the execution of judgment and conviction dated 9-5-2002 was stayed by the appellate Court by its order 31-5-2002. Therefore, the returning Officer rightly rejected the objection raised before him during the scrutiny and he was not disqualified and is not guilty of suppression of the facts. He also took the plea that the election petitioner did not deposit the security amount within the prescribed time period, therefore, petition be dismissed being barred by time. The security deposit was made on 19-1-2004 whereas the election petition was filed on 17-1-2004. As such election petition is barred by time. However, it may be stated at the outset that so far as this objection is concerned we ourselves checked up the date and we find that the election petition was filed on 19-1-2004 with security amount. Hence, this objection is factually incorrect and overruled.

The question before us is whether the order passed by the appellate Court in a Criminal case on 9-5-2002 whereby the conviction and sentence of the appellant was suspended, whether this amounts to staying the conviction or not ? All other questions are not relevant except the aforesaid question. However, learned Single Judge after relying on decision of this Court in the case of **K. Prabhakaran** Vs. **P. Jayarajan** reported in [**(2005) 1 SCC 754**] held that the returning officer committed an illegality in accepting the nomination of the appellant because the appellant's conviction was not stayed but suspended. Therefore , incumbent was disqualified at the time of scrutiny and accordingly the learned judge decided this issue in favour of the election petitioner and consequently the election petition was allowed and election was set aside. Hence, the present appeal.

We have heard learned counsel for the parties and perused the record.

The main question before us is whether the view taken by the learned single judge of the High Court is correct or not ?

Section 8 (3) of the Representation of People Act, 1951 is reproduced hereunder ;

"8. **Disqualification of conviction for certain offences.-**

(1) ....

(2) ....

(3) A person convicted of any offence and sentenced to imprisonment for not less than two years (other than any offence referred to in sub-section (1) or sub-section (2) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(4) ....

The legal position is already crystallized by this Court in the case of K. Prabhakaran (Supra) wherein it was held as under;

"42. What is relevant for the purpose of Section 8 (3) is the actual period of imprisonment which any person convicted shall have to undergo or would have undergone consequent upon the sentence of imprisonment pronounced by the court and that has to be seen by reference to the date of scrutiny of nominations or date of election. All other factors are irrelevant. A person convicted may have filed an appeal. He may also have secured an order suspending execution of the sentence or the order appealed against under Section 389 of the Code of Criminal Procedure, 1973. But that again would be of no consequence. A court of appeal is empowerd under Section 389 to order that pending an appeal by a convicted person the execution of the sentence or order appealed against be suspended and also, if he is in confinement, that he be released on bail or bond. What is suspended is not the conviction or sentence; it is only the execution of the sentence or order which is suspended. It is suspended and not obliterated. It will be useful to refer in this context to a Constitution Bench judgment of this Court in Sarat Chandra Rabha Vs. Khagendranath Nath ? The convict had earned a remission and the period of imprisonment reduced by the

period of remission would have had the effect of removing disqualification as the period of actual imprisonment would have been reduced to a period of less than two years. The Constitution Bench held that the remission of sentence under Section 401 of the Criminal Procedure Code (old) and his release from jail before two years of actual imprisonment would not reduce the sentence to one of a period of less than two years and save him from incurring the disqualification.

"An order of remission thus does not in any way interfere with the order of the court; it affects only the execution of the sentence passed by the court and free the convicted person from his liability to undergo the full term of imprisonment inflicated by the court, though the order of conviction and sentence passed by the court still stands as it was. The power to grant remission is executive power and cannot have the effect which the order of an appellate or revisional court would have of reducing the sentence passed by the trial court and substituting in its place the reduced sentence adjudged by the appellate or revisional court."

Recently this Court in the case of **Ravikant S. Patil** Vs. **Sarvabhouma S. Bagali** reported in [2006 (12) SCALE 295] has clearly held that the Court has enough power to stay the conviction. It was held as under :-

"it deserves to be clarified that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of a case. Where the execution of the sentence is stayed, the conviction continoues to operate. But where the conviction itself is stayed, the effect is that the conviction will not be operative from the date of stay. An order of stay, of course, does not render the conviction non-existent, but only non-operative. Be that as it may, insofar as the present case is concerned, an application was filed specifically seeking stay of the order of conviction specifing that consequences if conviction was not stayed, that is, the appellant would incur disqualification to contest the election. The High Court after considering the special reason, granted the order staying the conviction. As the conviction itself is stayed in contrast to a stay of execution of the sentence, it is not possible to accept the contention of the respondent that the disqualification arising out of conviction continoues to operate even after stay of conviction."

Again recently in the case of **Navjot Singh Sidhu** Vs. **State of Punjab** reported in [JT 2007 (2) SC 382], Hon'ble Court while entertaining the appeal of accuse stayed the conviction. The relevant portion of the judgment reads as under;

"13.1 The Act provides not only the eligibility and qualification for membership of House of People and Legislative Assembly but also for disqualification on conviction and other matters. The parliament in its wisdom having made a specific provision for disqualification on conviction by enacting Section 8, it is not for the Court to abridge or expand the same. The decisions of this Court rendered in **Rama Narang V. Kant S. Patil** Vs. **Sarvabhouma S. Bagali** (Supra) having recognized the power possessed by the Court of appeal to suspend or stay an order of the conviction and having also laid down the parameters for exercise of such power, it is not possible to hold, as a matter of rule, or to lay down, that in order to prevent any person who has committed an offence from entering the Parliament or the Legislative Assembly the order of the conviction should not be suspended. The Courts have to interpret the law as it stands and not on considerations which may be perceived to be morally more correct or ethical."

Therefore, this Court in recent decisions held that the appellate Court has power to stay the execution of the conviction and if appellate Court has stayed the conviction then in that case, this will not operate as a disqualification. But simply order of suspension of the sentence will not operate as staying the conviction. It was specifically mentioned that the stay of order of the conviction will mean it is temporarilly non-operative.

As already mentioned above, in the present case it is clearly transpired that the appellate Court suspended the order of the trial court dt. 9th May, 2002 and granted the bail to the accused appellant. The suspension does not mean the stay of the conviction. We have ourselves seen the application for suspenion of sentence. The said application is a routine application under Section 389 whereby the the appellant sought for the suspension of sentence. There is nothing in that application to suggest that applicant therein had sought the stay of conviction in contra-distinction to the suspension of sentence. **In Ravi Kant Patel's** case cited supra, it will be seen that an application for stay of conviction was specifically filed specifying the consequences if the conviction was not stayed. This Court had taken that fact into consideration while hoding that in that case the conviction was specifically stayed. Such is not the case here. If the incumbent had been vigilant enough, he could have moved the court even later on after obtaining the stay of conviction particularly in view of the fact that he wanted to contest the election but that was not done.

In the case of **Rama Narang** Vs. **Ramesh Narang and Ors.** reported in [1995 (2) SCC 513] their Lordships were examining the effect of conviction under the Companies Act, 1956, that what is the effect of the conviction of Managing Director for an offence involving moral turpitude as disqulification and suspension of that conviction by the

appellate court. This Court after examining the question took the view that Section 389 (1) of the CR. P. C. confers the power on appellate Court to stay the operation of the order of the conviction. if the order of conviction is to result to some disqualification of the type mentioned in Section 267 of the Companies act, a narrow meaning should not be given to Section 389 (1) of the Code to bar the Court from granting an order staying operation of order of conviction in a fit case. Therefore, their Lordships were very clear that Section 389 (1) of the Code empowers the appellate court to stay the conviction also. But suspension will not amount to staying the conviction. It was held as under.

That takes us to the question whether the scope of Section 389 (1) of the Code extends to conferring power on the Appellate Court to stay the operation of the order of conviction. As stated earlier, if the order of conviction is to result in some disqualification of the type mentioned in section 267 of the Companies Act, we see no reason why we should give a narrow meaning to Section 389 (1) of the Code to debar the court from granting an order to that effect in a fit case. The appeal under Section 374 is essentially against the order of conviction because the order of sentence is merely consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt. Therefore, when an appeal is preferred under Section 374 of the Code the appeal is against both the conviction and sentence and therefore, we see no reason to place a narrow interpretation on Section 389 (1) of the Code not to extend it to an order of conviction, although that issue in the instant case recedes to the background because High Courts can exercise inherent jurisdiction under Section 482 of the Code if the power was not to be found in Section 389 (1) of the Code. We are, therefore, of the opinion that the Division Bench of the High Court of Bombay was not right in holding that the Delhi High Court could not have exercised jurisdiction under Section 482 of the code if it was confronted with a situation of there being no other provision in the Code for staying the operation of the order of conviction. In a fit case if the High Court feels satisfied that the order of conviction needs to be suspended or stayed so that the conviceted person does not suffer from a certain disqualification provided for in any other statute, it may exercise the power because otherwise the damage done cannot be undone; the disqualification incurred by Section 267 of the Companies Act and given effect to cannot be undone at a subsequent date if the conviction is set aside by the Appellate Court. But while granting a stay of (Sic or) suspension of the order of conviction the Court most examine the pros and cons and if it feels satisfied that a case is made out for grant of such an order, it may do so and in so doing it may, if it considers it approprite, impose such conditions as are considered appropriate to protect the interest of the shareholders and the business of the company."

As already pointed out above that on 31st May,2002 the appellate Court while granting him the bail only suspended the impugned order dated 9th May, 2002. Thus suspension does not amount to temporarily washing out the conviction. The conviction still remains, only the operation of the order and the sentence remiain suspended that does not amount to temporary stay of the conviction. A specific order staying conviction has to be sought.

Heance, the view taken by the learned Single Judge of the Chhattisgarh High Court is correct and there is no ground to interfere. This appeal is dismissed with no order as to costs.

............................J

(A. K. MATHUR)

..................................J

(V. S. SIRPURKAR)

New Delhi.

February 27, 2007.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

New Delhi, Dated 4th April, 2007—14 Chaitra, 1929 (Saka)

NOTIFICATION

No. 82/CG-LA/9/04.—In pursuance of clause (b) sub-section 2 of Section 116C of the Representation of the People Act, 1951 (43 of 1951) the Election Commisssion of India hereby publishes the order dated 27th February 2007 of the Supreme Court of India in Civil Appeal No. 4055 of 2006 arising from the judgment dated 01-08-2006 of the High Court of Chhattisgarh at Bilaspur in Election Petition No. 09 of 2004.

By order,

Sd/-
(LALIT MOHAN)
Secretary,
Election Commission of India.

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 4055 OF 2006

Lalsai Khunte ... Appellant

Versus

Nirmal Sinha & Ors. ... Respondents

JUDGMENT

A. K. MATHUR, J.

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IPC and punished with rigorous imprisonment for one year by judgment and order dated 9-5-2002. Aggrieved against this order appellant filed appeal before District Judge and learned Additional Sessions Judge by his order dated 31-5-2002 released appellant on furnishing Bond & Security & suspended judgment & Order of Additional Chief Judicial Magistrate dated 9-5-2002. All candidates were required to submit their nomination alongwith their declaration and affidavit wherein they were required to disclose particulars of conviction for two years or more. The appellant Lalsai though he was convicted and was disqualified but mislead the returning officer and concealed the vital information in the affidavit of his conviction. Therefore, the returning officer could not cencel his nomination.

The lost candidate filed the present election petition raising the question of disqualification of appellant under Section 8 (3) of the Representation of people Act, 1951 (hereinafter referred as 'the R. P. Act'). The defence of the appellant was that the execution of judgment and conviction dated 9-5-2002 was stayed by the appellate Court by its order 31-5-2002. Therefore, the returning Officer rightly rejected the objection raised before him during the scrutiny and he was not disqualified and is not guilty of suppression of the facts. He also took the plea that the election petitioner did not deposit the security amount within the prescribed time period, therefore, petition be dismissed being barred by time. The security deposit was made on 19-1-2004 whereas the election petition was filed on 17-1-2004. As such election petition is barred by time. However, it may be stated at the outset that so far as this objection is concerned we ourselves checked up the date and we find that the election petition was filed on 19-1-2004 with security amount. Hence, this objection is factually incorrect and overruled.

The question before us is whether the order passed by the appellate Court in a Criminal case on 9-5-2002 whereby the conviction and sentence of the appellant was suspended, whether this amounts to staying the conviction or not ? All other questions are not relevant except the aforesaid question. However, learned Single Judge after relying on decision of this Court in the case of **K. Prabhakaran** Vs. **P. Jayarajan** reported in [**(2005) 1 SCC 754**] held that the returning officer committed an illegality in accepting the nomination of the appellant because the appellant's conviction was not stayed but suspended. Therefore , incumbent was disqualified at the time of scrutiny and accordingly the learned judge decided this issue in favour of the election petitioner and consequently the election petition was allowed and election was set aside. Hence, the present appeal.

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(1) ....

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(4) ...."

The legal position is already crystallized by this Court in the case of K. Prabhakaran (Supra) wherein it was held as under;

"42. What is relevant for the purpose of Section 8 (3) is the actual period of imprisonment which any person convicted shall have to undergo or would have undergone consequent upon the sentence of imprisonment pronounced by the court and that has to be seen by reference to the date of scrutiny of nominations or date of election. All other factors are irrelevant. A person convicted may have filed an appeal. He may also have secured an order suspending execution of the sentence or the order appealed against under Section 389 of the Code of Criminal Procedure, 1973. But that again would be of no consequence. A court of appeal is empowerd under Section 389 to order that pending an appeal by a convicted person the execution of the sentence or order appealed against be suspended and also, if he is in confinement, that he be released on bail or bond. What is suspended is not the conviction or sentence; it is only the execution of the sentence or order which is suspended. It is suspended and not obliterated. It will be useful to refer in this context to a Constitution Bench judgment of this Court in Sarat Chandra Rabha Vs. Khagendranath Nath ? The convict had earned a remission and the period of imprisonment reduced by the

period of remission would have had the effect of removing disqualification as the period of actual imprisonment would have been reduced to a period of less than two years. The Constitution Bench held that the remission of sentence under Section 401 of the Criminal Procedure Code (old) and his release from jail before two years of actual imprisonment would not reduce the sentence to one of a period of less than two years and save him from incurring the disqualification.

"An order of remission thus does not in any way interfere with the order of the court; it affects only the execution of the sentence passed by the court and free the convicted person from his liability to undergo the full term of imprisonment inflicated by the court, though the order of conviction and sentence passed by the court still stands as it was. The power to grant remission is executive power and cannot have the effect which the order of an appellate or revisional court would have of reducing the sentence passed by the trial court and substituting in its place the reduced sentence adjudged by the appellate or revisional court."

Recently this Court in the case of **Ravikant S. Patil** Vs. **Sarvabhouma S. Bagali** reported in [2006 (12) SCALE 295] has clearly held that the Court has enough power to stay the conviction. It was held as under :-

"it deserves to be clarified that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of a case. Where the execution of the sentence is stayed, the conviction continoues to operate. But where the conviction itself is stayed, the effect is that the conviction will not be operative from the date of stay. An order of stay, of course, does not render the conviction non-existent, but only non-operative. Be that as it may, insofar as the present case is concerned, an application was filed specifically seeking stay of the order of conviction specifing that consequences if conviction was not stayed, that is, the appellant would incur disqualification to contest the election. The High Court after considering the special reason, granted the order staying the conviction. As the conviction itself is stayed in contrast to a stay of execution of the sentence, it is not possible to accept the contention of the respondent that the disqualification arising out of conviction continoues to operate even after stay of conviction."

Again recently in the case of **Navjot Singh Sidhu** Vs. **State of Punjab** reported in [JT 2007 (2) SC 382], Hon'ble Court while entertaining the appeal of accuse stayed the conviction. The relevant portion of the judgment reads as under;

"13.1 The Act provides not only the eligibility and qualification for membership of House of People and Legislative Assembly but also for disqualification on conviction and other matters. The parliament in its wisdom having made a specific provision for disqualification on conviction by enacting Section 8, it is not for the Court to abridge or expand the same. The decisions of this Court rendered in **Rama Narang V. Kant S. Patil** Vs. **Sarvabhouma S. Bagali** (Supra) having recognized the power possessed by the Court of appeal to suspend or stay an order of the conviction and having also laid down the parameters for exercise of such power, it is not possible to hold, as a matter of rule, or to lay down, that in order to prevent any person who has committed an offence from entering the Parliament or the Legislative Assembly the order of the conviction should not be suspended. The Courts have to interpret the law as it stands and not on considerations which may be perceived to be morally more correct or ethical."

Therefore, this Court in recent decisions held that the appellate Court has power to stay the execution of the conviction and if appellate Court has stayed the conviction then in that case, this will not operate as a disqualification. But simply order of suspension of the sentence will not operate as staying the conviction. It was specifically mentioned that the stay of order of the conviction will mean it is temporarilly non-operative.

As already mentioned above, in the present case it is clearly transpired that the appellate Court suspended the order of the trial court dt. 9th May, 2002 and granted the bail to the accused appellant. The suspension does not mean the stay of the conviction. We have ourselves seen the application for suspenion of sentence. The said application is a routine application under Section 389 whereby the the appellant sought for the suspension of sentence. There is nothing in that application to suggest that applicant therein had sought the stay of conviction in contra-distinction to the suspension of sentence. In **Ravi Kant Patel's** case cited supra, it will be seen that an application for stay of conviction was specifically filed specifying the consequences if the conviction was not stayed. This Court had taken that fact into consideration while hoding that in that case the conviction was specifically stayed. Such is not the case here. If the incumbent had been vigilant enough, he could have moved the court even later on after obtaining the stay of conviction particularly in view of the fact that he wanted to contest the election but that was not done.

In the case of **Rama Narang** Vs. **Ramesh Narang and Ors.** reported in [1995 (2) SCC 513] their Lordships were examining the effect of conviction under the Companies Act, 1956, that what is the effect of the conviction of Managing Director for an offence involving moral turpitude as disqulification and suspension of that conviction by the

appellate court. This Court after examining the question took the view that Section 389 (1) of the CR. P. C. confers the power on appellate Court to stay the operation of the order of the conviction. if the order of conviction is to result to some disqualification of the type mentioned in Section 267 of the Companies act, a narrow meaning should not be given to Section 389 (1) of the Code to bar the Court from granting an order staying operation of order of conviction in a fit case. Therefore, their Lordships were very clear that Section 389 (1) of the Code empowers the appellate court to stay the conviction also. But suspension will not amount to staying the conviction. It was held as under.

That takes us to the question whether the scope of Section 389 (1) of the Code extends to conferring power on the Appellate Court to stay the operation of the order of conviction. As stated earlier, if the order of conviction is to result in some disqualification of the type mentioned in section 267 of the Companies Act, we see no reason why we should give a narrow meaning to Section 389 (1) of the Code to debar the court from granting an order to that effect in a fit case. The appeal under Section 374 is essentially against the order of conviction because the order of sentence is merely consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt. Therefore, when an appeal is preferred under Section 374 of the Code the appeal is against both the conviction and sentence and therefore, we see no reason to place a narrow interpretation on Section 389 (1) of the Code not to extend it to an order of conviction, although that issue in the instant case recedes to the background because High Courts can exercise inherent jurisdiction under Section 482 of the Code if the power was not to be found in Section 389 (1) of the Code. We are, therefore, of the opinion that the Division Bench of the High Court of Bombay was not right in holding that the Delhi High Court could not have exercised jurisdiction under Section 482 of the code if it was confronted with a situation of there being no other provision in the Code for staying the operation of the order of conviction. In a fit case if the High Court feels satisfied that the order of conviction needs to be suspended or stayed so that the conviceted person does not suffer from a certain disqualification provided for in any other statute, it may exercise the power because otherwise the damage done cannot be undone; the disqualification incurred by Section 267 of the Companies Act and given effect to cannot be undone at a subsequent date if the conviction is set aside by the Appellate Court. But while granting a stay of (Sic or) suspension of the order of conviction the Court most examine the pros and cons and if it feels satisfied that a case is made out for grant of such an order, it may do so and in so doing it may, if it considers it approprite, impose such conditions as are considered appropriate to protect the interest of the shareholders and the business of the company."

As already pointed out above that on 31st May,2002 the appellate Court while granting him the bail only suspended the impugned order dated 9th May, 2002. Thus suspension does not amount to temporarily washing out the conviction. The conviction still remains, only the operation of the order and the sentence remiain suspended that does not amount to temporary stay of the conviction. A specific order staying conviction has to be sought.

Heance, the view taken by the learned Single Judge of the Chhattisgarh High Court is correct and there is no ground to interfere. This appeal is dismissed with no order as to costs.

..........................J

(A. K. MATHUR)

..............................J

(V. S. SIRPURKAR)

New Delhi.

February 27, 2007.

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